



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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To: All Field Offices

From: State Director

Subject: Land Exchange Processing - NEPA Documentation

The General Accounting Office's (GAO) review of one of California's assembled land exchange transactions questioned the public interest determination documented for our exchanges. Some of this concern stems from the lack of documentation contained in the administrative record for the exchange, including the National Environmental Policy Act (NEPA) documentation. WO-350, as a result of the program review they conducted last year, is in the process of rewriting the Exchange Handbook and providing updated policy direction on many aspects of the exchange program.

The purpose of this memorandum is to provide interim guidance to strengthen specific areas of the administrative record for exchange actions in view of the concerns. When preparing NEPA documents for land exchange transactions close attention must be given to accomplishing: (1) definitive documentation for public interest determinations in the environmental documents, including the decision record; (2) a direct linkage between the non-federal and federal land involved in the exchange; (3) where appropriate, the use of existing NEPA documents by means of tiering and incorporation by reference; and (4) elimination of appeals language from the decision record/FONSI.

Public Interest Determination

The public interest criteria (defined under 43 CFR 2200.0-6(b)) states that an exchange may be completed **only** after the authorized officer makes a determination that the public interest will be well served. Although the public interest criteria should be considered during the feasibility stage of an exchange, it must be fully documented in the environmental documents, including the decision records for each exchange proposal.¹ Existing program guidance on page 33 in Chapter 9 of BLM Land Exchange Manual Handbook H-2200-1 dated August 14, 1997, established these additional guidelines for documenting the conclusion:

- (1) a statement, **including rationale**, that the exchange is in the public interest;

¹ A statement should be placed in the notice of decision (NOD) that the public will be well served by making the exchange (per illustration 6(a) on page 101 of the Exchange Handbook H-2201-1).

- (2) a complete description of lands and interests in lands to be exchanged and all conditions of the exchange, including all mineral and other reservations as well as other rights that will be reserved;
- (3) NEPA documentation (to support the conclusion), including reference to any programmatic EAs or existing EAs incorporated by reference; and
- (4) adherence to procedures addressing protests and appeals.

The rationale must include a definitive explanation of the factors considered by the authorized officer in making the determination that the exchange is in the public interest. This includes separate findings required at 43 CFR 2200.0-6(b)(1)&(2). It is important that these findings are not simply a reiteration of the language in the regulations, but are findings made after considering the specific elements of the exchange. A good example of a decision record containing a public interest determination as part of the rationale for the decision has been attached for your reference and use in future land exchange actions (**Attachment 1**).

Linking the non-federal to the federal land in the NEPA document

Non-specific descriptions of lands or interests in land are unacceptable. We have done a good job of concisely describing the federal land in NEPA documents, feasibility reports, notices to the public, and other required reports and the same level of conciseness must be accomplished for the non-federal land. All NEPA documents must analyze the potential impacts of both the non-federal and federal lands of an exchange proposal in the same environmental document. A NEPA analysis that considers the potential impacts of only one side of a proposed exchange is not acceptable. It is imperative that the analysis consider the potential impacts of the exchange as a whole, and not as independent disposal and acquisition actions. This complete analysis, including appraised values and supporting studies of both the federal and non-federal lands, is necessary to allow the authorized officer to make an informed public interest determination and to ensure that the public is fully informed of our intent. Although we recognize it is often difficult to obtain agreements with willing landowners or exchange facilitators for non-federal land that coincide with the disposal of federal land, both sides of lands in the exchange must be identified and considered in the NEPA documents.

If additional non-federal or federal lands need to be subsequently added to the exchange package, the environmental documents, including NEPA compliance, clearances other required reports and public notices must be updated.

All NEPA documents for proposed land exchange actions must include alternatives. As a minimum the “no-action”, “sale” or “purchase” alternatives must be considered. This is a reasonable range of alternatives that must be considered and documented in the analysis. Measures that could mitigate potential impacts associated with proposed exchanges should be stated in the environmental documentation and, if appropriate, be adopted in the decision record.

The question always comes up for the non-federal lands, how much detail do we need to include in the EA? BLM may not have inventoried the non-federal lands so we may not have the same level of specificity of resource information there as for the federal parcels. The exchange EA can have a more general level of specificity for the non-federal lands as long as the EA explains that situation and provides the best information available in the analysis.

Plan Conformance

Upon reviewing the exchange proposal and determining it does not conform to the disposal/acquisition decisions in your land use planning document, a plan amendment may be required pursuant to 43 U.S.C. 1701(a)(1). BLM planning regulations encourage the use of a combined notice to the public. Refer to illustration 6(b) on page 102 of the Exchange Handbook for an example of a combined notice of plan amendment and notice of decision for land exchange.

Use of existing NEPA documents

Where appropriate, existing environmental analysis should be used to aid in preparing the NEPA documentation for the exchange. Several methods of using existing environmental analysis are available including tiering, incorporation by reference and supplemental environmental documents. This will save time and reduce redundancy. Some examples include:

The decision reached in the previously prepared document(s) should be brought forth and weighed against the conclusion in the decision record for the new NEPA document:

1. EA/DR prepared for a land exchange is tiered to the RMP analysis, or a programmatic exchange NEPA document;
2. EA/DR prepared for an exchange that incorporated an existing NEPA document for only one side of the exchange. The existing NEPA document(s) should be attached to the new EA and the determination of the public interest for both sides of the exchange discussed in the decision record for the exchange;
3. EA/DR supplemented for additional lands subsequently added to an exchange;
4. Environmental Compliance/DR where the exchange has been identified and analyzed in the existing NEPA documentation and all that is needed is a record that the required conditions of the decision record have been met. In addition, compliance with W.O. IM No. 99-149 is required, "Subject: Documentation of Land Use Plan Conformance and National Environmental Policy Act (NEPA) Adequacy" dated July 1, 1999. For further guidance on using existing environmental analysis, refer to BLM NEPA Handbook, H-1790-1Chapter III, dated October 25, 1988. In any event for all these options a quality control review should be undertaken to ensure that the documents meet NEPA standards.

Elimination of improper appeals language from the decision record/FONSI:

The public interest determination and decision record may be protested but are not appealable at this point. The right to appeal arises when BLM issues a final decision on any properly filed protest. Therefore, **DO NOT place appeals language in the land exchange decision record/FONSI.** An explanation of the protest period and appeal process is found on page 35 of the existing Exchange Handbook.

As we are all aware, exchanges are not always simple transactions and we recognize that deviations from the established process will be inevitable for a variety of unpredictable reasons. We have had a very successful exchange program in California and must continue to be creative to make this program work to our benefit. However, with the increased scrutiny of the exchange program, it is equally important that we work to avoid any further misunderstanding of our land exchange actions.

Any questions should be directed to David McIlnay, Chief, Branch of Lands at (916)978-4630.

Signed
Karen Barnette
Acting State Director

Authenticated By
Louise Tichy
Records Management

2 Attachments

1. - Example - Decision Record and FONSI (2 pg.)

DECISION RECORD AND FONSI

DECISION:

It is my decision to complete the Cache Creek Phase III land exchange (Payne Ranch) between BLM and CAL-BLMX, Inc. I have determined that the public interest will be well served by the exchange of 1515.38 acres of federal land consisting of parcel numbers 002-SL, 101-L, 102-L, 103-L, 126-L, 127-L, 129-L, 138-L, 006-M, 009-M, 021-M, 031-M, 043-M, and 173-M located in Solano, Lake, and Mendocino counties, identified in Exhibit A, for 5249.90 acres of non-federal land known as the Payne Ranch, located in Colusa, Lake, and Yolo counties, identified in Exhibit B. The exchange is in conformance with the decisions made in the Clearlake Management Framework Plan Update of 1984.

RATIONALE:

Public Interest Determination:

The resource values to be acquired in the exchange will far outweigh the resource values on the public lands. The resource values to be acquired can be described as follows:

Protection, management, and enhancement of significant wildlife habitat, cultural resource values, and recreation for the Cache Creek Management Area. Specific wildlife values include tule elk, bald eagles (year-round), blacktail deer, black bear, wild pig, wild turkey, valley quail, and mourning dove. The Payne Ranch parcels provide trail access via scenic trails along ridge tops with views of the river canyon and remote vistas. The public is presently utilizing the public lands in the area and their use would expand onto the lands to be acquired. They would also use the new areas recently acquired for hunting and fishing. Many forms of primitive recreation will become available including river running, hiking, backpacking, mountain biking, equestrian use, and nature study. Once this acquisition is consummated, further studies will be made to determine the exact extent of the resources.

Diverse public interest. Since BLM's acquisition of private property through Phases I and II of the Payne Ranch in the Cache Creek Management Area, there has been considerable interest from academic institutions such as the University of California, Davis and Berkeley, California State University, Chico, and others to study the biological, cultural, and recreational resources on the existing acquired lands. The addition of the proposed Phase III would add an additional 5249.90 acres to the area for future study. Programs are regularly presented to various schools, service organizations, conservation groups, and hunting groups. Volunteers are utilized extensively within the area. Projects include clean-up, bald eagle monitoring, trail maintenance, and visitor assistance on Bureau-sponsored tours, and assistance in cultural inventories through Cooperative Management Agreements.

Consolidation of lands or interests in lands. By acquiring the private lands within the Cache Creek Management Area through exchange and disposing of scattered, isolated parcels, the resource management objectives may be carried out in a more effective manner.

The public parcels proposed for exchange have limited or no access and through the analysis were found to contain no significant resource values. The Payne Ranch resource values (wildlife, recreation and cultural) far exceed any resource values on the scattered isolated public parcels. The highest and best use of the federal lands is assemblages into adjoining private landownership patterns. The federal lands will be Attach 1-2 conveyed to adjacent landowners and used in conjunction with their existing uses.

Conformance with Land Use Plan: Disposing of the Federal lands that are scattered, isolated and inefficient for public management is in conformance with the Management Framework Plan Update, Clear Lake Resource Area, October 1984. The Federal lands were addressed in the referenced MFP under the heading “Scattered Tracts Management Area”, paragraph III. - Specific Management Decisions, sub-paragraph E. Other, “Small Parcels” on page 26, which states, “This unit contains most of the small scattered units that are inefficient for public management. All scattered, isolated parcels will be candidates for disposal.”

Under the same MFP Update, the non-Federal lands were addressed, under the heading “Rocky Creek-Cache Creek Management Area”, paragraph IV.C. - Specific Management Decisions, “Land Status Adjustment” on page 16, which states, “As described in Alternative 3, Clear Lake Wilderness Study EIS, acquire through exchange or other feasible methods lands in Cache Creek corridor for recreation and wildlife purposes.

Implementation Period:

The decision to complete the land exchange will occur following the completion of the 45-day public review period beginning with the publication of the Notice of Availability of the Decision and resolution of any protests received.

MITIGATION MEASURES: No mitigation measures were identified in the EA.

COMPLIANCE PLAN: Not Applicable.

FONSI

I have reviewed Environmental Assessment CA-340-00-040, which analyzes the environmental effects of the proposed action, and have determined that the proposed action results in a Finding of No Significant Impact on the human environment. I find that proper consideration has been given to all resource values and that this Assessment is technically adequate. Therefore, an environmental impact statement is not required to further analyze the environmental effects of the proposed action.

Reviewed By:

Environmental Coordinator

Date

Supervisory Resource Management Specialist

Date

Approved By:

Manager, Ukiah Field Office

Date